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DD

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/053,346 04/01/98 ROGONE M 18661-000100

QM12/0719

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EXAMINER

KEARNEY, R

ART UNIT	PAPER NUMBER
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3739

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DATE MAILED:

07/19/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.	09/053346	Applicant(s)
Examiner	Group Art Unit	

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

Responsive to communication(s) filed on 4-1-98.

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

Claim(s) 1-20 is/are pending in the application.

Of the above claim(s) _____ is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) 1-20 is/are rejected.

Claim(s) _____ is/are objected to.

Claim(s) _____ are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The proposed drawing correction, filed on _____ is approved disapproved.

The drawing(s) filed on _____ is/are objected to by the Examiner.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All Some* None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) _____.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

Attachment(s)

Information Disclosure Statement(s), PTO-1449, Paper No(s). 2

Interview Summary, PTO-413

Notice of References Cited, PTO-892

Notice of Informal Patent Application, PTO-152

Notice of Draftsperson's Patent Drawing Review, PTO-948

Other _____

Office Action Summary

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DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 recites the sheet as "being substantially the same size as an open bedding portion . . ." An open bedding portion of a radiant warmer is an indefinite point of reference, hence the claim does not clearly recite the size of the sheet.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 8-10, 15 and 18 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Pronzinski. Pronzinski discloses a thermal and moisture barrier comprising a substantially flexible cover (10) and at least one opening (see column 2 lines 40-43).

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Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2-5, 11-13, 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pronzinski as applied to claim 1 above, and further in view of Koria. Pronzinski explicitly teaches all of the limitations of the claims except the opening including a diaphragm and the diaphragm comprising a superposed sheet of flexible material.

Koria discloses a similar device and teaches that it is old and well known in the art to provide a diaphragm to close the opening and a superposed cover (22 of Figure 1b). The diaphragm and cover provide a means of accessing the patient without contaminating the self-contained environment. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a diaphragm and cover on the opening of Pronzinski to prevent the contained environment from being contaminated.

Koria does not disclose the cover as a sheet of flexible material, however it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a cover made of flexible material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for its intended use.

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6. Claims 6, 14 and 20 rejected under 35 U.S.C. 103(a) as being unpatentable over Pronzinski as applied to claim 1m 10 and 18 respectively above, and further in view of Barsky et al. Pronzinski teaches all of the limitations of the claims except the cover being formed from a substantially rectangular sheet. Barsky et al. discloses a similar device that is formed from a substantially rectangular sheet as illustrated in Figure 6. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to construct the Pronzinski device using a substantially rectangular sheet as illustrated by Barsky et al. since forming a device in a particular shape involves routine skill in the art.

7. Claims 7 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pronzinski. Pronzinski explicitly teaches all of the limitations of the claims except the cover defining a tetrahedral enclosure. It would have been obvious to one of ordinary skill in the art at the time the invention was made to construct the Pronzinski of a shape that defines a tetrahedral enclosure since a simple redesign modifying the shape of a preexisting apparatus only involves routine skill in the art.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rosiland Kearney whose telephone number is (703) 308-2711. The examiner can normally be reached on Mondays through Fridays from 9:00 AM to 4:00 PM.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0858.



LINDA C. M. DVORAK
SUPERVISORY PATENT EXAMINER
GROUP 3700

RK

June 17, 1999